

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7083 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

BHIMSINH ARJAN YADAV

Versus

STATE OF GUJARAT

Appearance:

MR RJ OZA for Petitioner

Ms MANISHA LAVKUMAR instructed by M/s M.G.

Doshit & Co. for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 16/07/1999

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner has prayed for a direction to consider the case of the petitioner for promotion from the post of Forest Guard to the post of Forester with effect from the date on which the petitioner's junior was promoted to the post of Forester i.e. with effect from 22.11.1985 and also for directing the respondents to

carry out the directions issued by this Court in Special Civil Application No. 6073/83.

2. The petitioner was appointed as a Forest Guard in December, 1972. The Selection Committee met on 23.12.1983 to consider the case of Forest Guards for promotion to the higher cadre of Foresters. According to the affidavit in reply filed by A.R. Chauhan, Administrative Officer on behalf of the respondents, the Selection Committee considered the petitioner's confidential reports and applying the criteria of proved merit-cum-efficiency found the petitioner not fit for promotion. It is specifically stated in the reply affidavit that the confidential report of the petitioner for year 1982-83 is "poor" and the said adverse remarks were communicated to the petitioner on 2.7.1983 and against which no representation was filed by the petitioner. It is further stated that the petitioner's representation with regard to the adverse remarks for the year 1981-82 was already considered as per the communication dated 7.10.1983 at Annexure "B" to the petition.

3. At the hearing of this petition, the learned counsel for the petitioner has stated that the petitioner had filed the representation/appeal against the adverse remarks for the year 1982-83 on 28.8.1983, a copy of the said representation/appeal was again given to the respondents through the Govt. Solicitors on 24.6.1986 and the said representation was allowed by the Conservator of Forests, Wild Life Circle, Junagadh as per his order No.EST/3/CR(11)/81-83/88-89 dated 1.8.1988 mentioning that the petitioner has submitted the representation dated 28.8.1983 against the adverse remarks for the year 1982-83 and that the said adverse remarks were given by the Deputy Conservator of Forests without any basis or scrutiny and that there was no ground for giving any such adverse remarks. The adverse remarks for the year 1982-83 were accordingly expunged. Obviously, the aforesaid order was passed by the Conservator of Forests during pendency of the petition and, therefore, it was not produced alongwith the memo of the petition, but the same is produced at the hearing today.

4. As far as the adverse remarks communicated to the petitioner for the year 1981-82 are concerned, there is no dispute about the fact that in response to the petitioner's appeal (representation) against the said adverse remarks, the authorities had by communication dated 7.10.1983 (No. EST-B-9175-83-84) clearly informed

the petitioner that the said remarks shall not be treated as adverse, a copy whereof is produced at Annexure "B" to the petition which refers to the adverse remarks for the year 1982-83, but there appears to be a typographical mistake which is again born out by the subsequent communication dated 1.8.1988 allowing the petitioner's representation in respect of the adverse remarks for the year 1982-83. The case of the respondents in the reply affidavit also is that communication dated 7.10.1983 at Annexure "B" to the petition deals with the remarks for the year 1981-82.

5. The resultant effect of the aforesaid discussion is that the departmental selection committee which considered the petitioner's case on 23.11.1983 had taken into consideration the adverse remarks for the year 1982-83 which subsequently came to be deleted as per the communication dated 1.8.1988. Hence, when the selection committee decided to recommend the case of the petitioner's immediate junior for promotion to the post of Forester and the petitioner's junior ultimately came to be promoted on 22.11.1985 as per the order at Annexure "C", the petitioner was not recommended for promotion possibly on account of the adverse remarks which ultimately came to be deleted. The petition, therefore, deserves to be allowed.

6. The petition is accordingly allowed. The respondents are directed to reconsider the petitioner's case for promotion to the post of Forester with effect from the date on which the petitioner's immediate junior Odhavji Puna was promoted as Forester (i.e. with effect from 22.11.1985 as per the order at Annexure "C") after ignoring the adverse remarks for the year 1982-83 as they have been deleted as per communication dated 1.8.1988 as stated above, and also after taking into consideration the communication dated 7.10.1983 (Annexure "B") that the remarks in the confidential report for the year 1981-82 (the communication wrongly stated that it pertained to the year 1982-83) were not to be treated as adverse remarks. In case the petitioner is found to be fit for promotion to the post of Forester with effect from the date on which the petitioner's immediate junior was promoted as Forester, the petitioner shall be granted all the consequential benefits in accordance with law i.e. deemed date, seniority and pay fixation.

The aforesaid exercise shall be undertaken by the respondents within three month from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier.

7. Rule is accordingly made absolute with no order as to costs.

July 16, 1999 (M.S. Shah, J.)

sundar/-